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695-274—63

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 243

THOMAS LETCHOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (IV. 1–8; Pet. App. 2A–10A)[1] is reported at 316 F. 2d 481.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 1963 (IV. 9, Pet. App. 1A). A petition

[1] The certified record is in four parts. Volume I consists of the appellant's appendix in the court of appeals and will be cited as "I". Volume II consists of appellant's Brief and Supplemental Appendix below and will be referred to as "II". Volume III consists of the government's brief and appendix below and will be referred to as "III". Volume IV is the certified proceedings of the court of appeals and is referred to as "IV".

for rehearing was denied on May 28, 1963 (IV. 10). The petition for a writ of certiorari was filed on June 27, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether it was an abuse of discretion to deny a motion for a new trial because some jurors, although they were qualified in petitioner's case after a full *voir dire* examination, had been excused in a previous case on the ground that they would give particular weight to the testimony of law enforcement officers.

STATEMENT

Petitioner was convicted by a jury in the United States District Court for the Northern District of Illinois of perjury in violation of 18 U.S.C. 1621 (I. 2–4, 6, 154) and was sentenced to imprisonment for one year (I. 182–183). The court of appeals affirmed the conviction (IV. 1–8).

1. The perjury charged arose out of petitioner's testimony at the trial of Anthony Accardo. Petitioner there testified under oath that Accardo first sold him Fox Head beer in June or July of 1956 and that he had seen Accardo in his place of business regularly as a customer (III. App. 2–5). He admitted that he had been interviewed by two revenue agents on January 6, 1960, but denied telling them that he did not know Accardo, that Accardo had never been in his place of business, or that he had purchased Fox Head beer from Joseph Bronge (III. App. 7–8). Two internal revenue agents testified that on

January 6, 1960 petitioner had told them he had purchased Fox Head beer from a friend of his, Joseph Bronge; that he did not know Accardo and could not recognize a picture of him; that he had never bought beer from him, and, so far as petitioner knew, Accardo had never been in his place of business (I. 24–26, 58–61, III. App. 10–11, 14–15).

2. Subsequent to the conviction, petitioner complained, in an amended motion for a new trial, that five of the jurors in his case had been excused from service in another case because on *voir dire* examination they had stated they would give particular weight to evidence given by F.B.I. agents (I. 158). A transcript of this previous *voir dire*, in a case entitled *United States* v. *Rabin*, was attached to the motion as Exhibit A (I. 160–164). The Rabin transcript showed that, in response to defense interrogation, Mrs. Moore, a prospective juror, indicated that she had respect for the F.B.I. who had no motives, but she did not know the background of the defense witnesses. She concluded (I. 161):

> I am also devoted to the idea that every man deserves a fair trial and I will certainly listen to every word of their defense, but I do think maybe that these folks come to us with a recommendation and your bring unknown witnesses to me.

The Court excused the juror (I. 161).

Thereafter another juror, upon questioning by the defense, gave a similar response (I. 162). After excusing that juror, the court indicated there was "no use in wasting time of this court" and that any per-

son who had the feeling that they would attach more significance to the testimony of a law enforcement officer, just because he was a law enforcement officer, was not qualified as a juror. He then indicated that if there were others who had this feeling they would be excused. Several prospective jurors raised their hands, and 10 more jurors were excused. The judge stated that it was his view that they wanted to get out of jury service (I. 162–164).

On the Monday following the Friday examination in *Rabin,* petitioner's case was called for trial (I. 160, II. Supp. App. 2). In the course of the interrogation of the jurors the trial judge in petitioner's case propounded the following general inquiry (II. Supp. App. 6):

> It is anticipated that some of the testimony in this case will be presented by government internal revenue agents or perhaps Federal Bureau of Investigation agents. Do you have any prejudice for or against testimony which is presented by agents of the United States Government? In other words, would you give it more or less credence than you would give to the testimony of any other witness who gets on the stand? Is there anybody who would be inclined to give it more or less credence? You would treat such a witness exactly the same as you would treat a civilian or non-governmental official, is that correct?

No juror indicated any bias, although the judge provided ample time for response (I. 168). Defense counsel, who was also allowed to examine the prospective jurors, did not use all of his peremptory chal-

lenges (II. Supp. App. 6, I. 169). Mrs. Moore, the juror who gave a response similar to hers in the *Rabin* case, and three others excused in the *Rabin* case were on the jury which tried petitioner.

During the course of the argument on the motion for a new trial, the judge stated he was satisfied that the jurors chosen in petitioner's case had responded truthfully in these proceedings and commented (I. 169), "All of my observations were that they were taking the *voir dire* interrogation very seriously, and I think I must say I had the feeling that this was a very conscientious jury over-all." The judge noted that the former judge had decided that the jurors were using this answer as an excuse to get out of a trial which everyone knew was going to run six to eight weeks and therefore it was questionable whether these jurors were actually ready to give greater credence to government agents than to anyone else (I. 172). The court also pointed out that, as a result of the vigorous reaction of the other judge, the jurors may have concluded that their former position had been erroneous and therefore had answered truthfully at both examinations. The judge stated (I. 174):

> * * * you will recall the carefulness with which all of us went into the various questions which were asked, and my feeling was that, and it is today, that this jury, as I observed them in the conduct of the *voir dire* and subsequently in their deliberations and in listening to the case, in their attitude in the course of the presentation of this, it was a very conscientious jury.

Accordingly, he denied the motion for a new trial (I. 181).

ARGUMENT

The conclusion of the trial judge, who had observed the jurors, that the responses of five of them in the *Rabin* case did not constitute such evidence of disqualification to try petitioner as would warrant granting a new trial, presents no issue calling for review by this Court. The judge carefully reviewed the transcript offered by petitioner in the light of the full *voir dire* in this case and came to the conclusion that there was no showing that the jury was not qualified. His careful exercise of discretion should be accepted on review. *Holt* v. *United States*, 218 U.S. 245, 248; see *United States* v. *Johnson*, 327 U.S. 106, 111.

There was no showing that the jurors were biased. The only witness in the *Rabin* case who was examined in any detail was Mrs. Moore, and she affirmatively expressed the view that she would listen to the defense and give the defendant a fair trial. She stated that the basis of her view was that she had respect for the F.B.I. This did not disqualify her as a matter of law. She said she would believe F.B.I. agents as against witnesses whose background she did not know. This is not the same as believing a witness solely because he is a law enforcement officer. *Chavez* v. *United States*, 258 F. 2d 816, 819 (C.A. 10), certiorari denied *sub nom. Tenorio* v. *United States*, 359 U.S. 916. It is not a signpost of partiality to give more

weight to opinion based upon a respected background than to an opinion based upon an unknown background. As noted above, the other jurors in question merely indicated concurrence in Mrs. Moore's view.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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